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REPORT TO THE HONORABLE
MAYOR AND CITY COUNCIL

EFFECT OF RECENT SUPREME COURT DECISION CONCERNING MEDICAL MARIJUANA ON CITY ATTORNEY'S POSITION CONCERNING STATE AND FEDERAL STATUTORY SCHEMES

QUESTION PRESENTED

What effect does the recent Supreme Court decision concerning medical marijuana have on the City Attorney's position concerning the state and federal statutory schemes?

BRIEF ANSWER

The Supreme Court's decision in *United States v. Oakland Cannabis Buyers' Cooperative*, 2001 DJDAR 4691 reinforces the City Attorney's position, articulated in a report to Mayor and Council, dated August 31, 1999 (attached). In spite of California's statutory scheme that permits an individual limited use of marijuana for medical purposes, federal law expressly prohibits the cultivation, transportation and sale of marijuana for any purpose. State and federal law cannot be reconciled with respect to this issue. In *United States v. Oakland*, the Oakland Cannabis Buyers' Cooperative ("Cooperative") argued that they should be able to distribute marijuana to qualified patients under a common law theory of medical necessity. The Supreme Court rejected this argument and held that no implied medical necessity exception exists to prohibitions on manufacture and distribution of marijuana established by the Controlled Substances Act. The Supreme Court decision upheld a United States District Court injunction prohibiting the Cooperative from distributing marijuana.

DISCUSSION

The conflict between California's medical marijuana statutory scheme and the federal Controlled Substance Act recently came before the United States Supreme Court in *United States v. Oakland Cannabis Club*, 2001 DJDAR 4691. The question before the Court was whether "medical necessity" was a legally cognizable defense to violations of the Controlled Substances

Act, specifically 21 U.S.C. section 841(a).

The Cooperative was one of several groups that sought to act as a "medical cannabis dispensary" in order to distribute marijuana to qualified patients who under California law were permitted to cultivate and possess marijuana for certain medical conditions as permitted by California Health and Safety Code section 11362.5 (Proposition 215). In January 1998, the United States sued the Cooperative in the United States District Court for the Northern District of California, seeking to enjoin the Cooperative from distributing and manufacturing marijuana. The United States argued that, whether or not the Cooperative's activities were legal under California law, they violated federal law which prohibits the distribution, manufacture, and possession with the intent to distribute marijuana, a Schedule I drug. The District Court granted the injunction enjoining the Cooperative from distributing cannabis. Rather than appeal the injunction, the Cooperative chose to openly violate it and continued its distribution. The Government then initiated contempt proceedings. In defense, the Cooperative contended that any distributions made were medically necessary and therefore permitted even under federal law. The District Court rejected this defense after determining that there was insufficient evidence that the recipients of marijuana were in actual danger of imminent harm without the drug. The Court of Appeal then reversed this decision and remanded back to the District, holding that there was a legally cognizable medical necessity defense that likely would apply under the described circumstances. The United States then petitioned the Supreme Court for certiorari to review the Court of Appeals decision.

A unanimous Court reversed 8-0 the Court of Appeals decision, holding that “medical necessity” is not a defense to the manufacture and distribution of marijuana. In analyzing the necessity defense, the Court questioned whether federal courts ever have the authority to recognize such a defense when not specifically provided by statute. The Court concluded that this question need not be answered in this case as it was clear that the “medical necessity exception for marijuana is at odds with the terms of the Controlled Substances Act”. 2001 DJDAR *at 4693.* The Court further stated that the federal statute “does not explicitly abrogate the defense. But its provisions leave *no doubt that the defense is unavailable*."
Id. (Emphasis added).

The Court also rejected the Cooperative’s argument that marijuana can be medically necessary notwithstanding that by definition as a Schedule I drug, it has "no currently accepted medical use in treatment in the United States", “has high potential for abuse” and has “a lack of accepted safety for use...under medical supervision”. The Court found that:

> It is clear from the text of the Act that Congress has made a determination that marijuana has no medical benefits worthy of exception. The statute expressly contemplates that many drugs "have a useful and legitimate medical purpose and

> are necessary to maintain the health and general welfare of the American people," §801, but it includes no exception at all for any medical use of marijuana. Unwilling to view this omission as an accident, and unable in any event to override a legislative determination manifest in a statute, we reject the Cooperative's argument. *Id*.

CONCLUSION

As was stated in the August 31, 1999 Memo to Mayor and Council, there is no way to legally harmonize state and federal laws concerning marijuana. With this current decision from the Supreme Court, it is also clear the United States Government has a demonstrated interest in preventing cannabis cooperatives and other such organizations, from distributing marijuana under any circumstances. Therefore, local municipalities should exercise caution in adopting any laws or policies that address the distribution of marijuana for medicinal use. It remains a federal crime to cultivate, or transport marijuana notwithstanding California's effort to carve out a medical exception. Therefore, even though a citizen of California may be exempt from prosecution under the current state statutory scheme, no assurance can be given that they will not be prosecuted federally.

Respectfully submitted,

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